

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL JACKSON,

Petitioner,

v.

WILLIE SMITH,

Respondent.

Case No. 12-cv-11463

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

UNITED STATES MAGISTRATE JUDGE
DAVID R. GRAND

**OPINION AND ORDER GRANTING PETITIONER AN EXTENSION OF TIME TO MOVE
TO REOPEN HIS CLOSED HABEAS CASE AND TO RE-FILE AN AMENDED PETITION
FOR WRIT OF HABEAS CORPUS WITH THIS COURT**

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he sought relief from his convictions for felon in possession of a firearm, possession of a short barreled shotgun, and two counts of felony-firearm. On June 5, 2013, this Court held the petition for writ of habeas corpus in abeyance to permit Petitioner to return to the state courts to exhaust additional claims which had not yet been presented to the state courts. The Court conditioned this tolling upon Petitioner initiating his state post-conviction remedies within sixty days of receiving this Court's order and returning to federal court within sixty days of completing the exhaustion of his state court post-conviction remedies. *Jackson v. Smith*, No. 4:12-CV-11463, 2013 WL 2447783 (E.D. Mich. June 5, 2013).

Petitioner has sent a letter to the Court, which was received by the Clerk's Office on May 17, 2016. Dkt. No. 15. Petitioner claims that he exhausted his state court remedies on November 25, 2014. Petitioner further claims that he re-filed an amended petition for writ of habeas corpus with the Clerk's Office in Flint, Michigan on December 1, 2014. Petitioner claims that the Clerk's Office in Flint, Michigan confirmed to Petitioner's fiancée that they received a copy of the amended habeas petition, but the docket sheets for Case # 4:12-CV-11463 do not show that any amended petition was ever filed with the Court. Petitioner has attached to his letter copies of his expedited legal mail from the Michigan Department of Corrections which show that pleadings were sent to the United States District Court in Flint, Michigan on December 1, 2014, although the documents do not indicate what case number these pleadings were intended for. Petitioner acknowledges that he has another habeas case pending before Judge Linda V. Parker but insists that the pleadings that he gave to the Michigan Department of Corrections on December 1, 2014 were the amended habeas petition meant for this case.

This Court has inquired with the Clerk's Office concerning the whereabouts of Mr. Jackson's amended habeas petition but they have been unable to locate any such pleadings.

For the reasons that follow, the Court will grant Petitioner a sixty day extension of time to move to reopen his habeas petition and to re-file his amended petition for writ of habeas corpus with this Court.

A federal district court has the power to extend the stay of a habeas petition, particularly where the respondent does not oppose the extension of the stay. *See e.g. Roberts v. Norris*, 415 F.3d 816, 819 (8th Cir. 2005). In the present case, Petitioner appears to have done all that he could reasonably do to re-file his habeas petition with this Court following the exhaustion of his state court remedies, but was “prevented in some extraordinary way” from re-filing his petition with this Court on time. Accordingly, an enlargement of time should be granted to Petitioner. *See Schillereff v. Quarterman*, 304 F. App’x 310, 314 (5th Cir. 2008).

ORDER

IT IS HEREBY ORDERED that Petitioner is **GRANTED** an extension of time to move to reopen his habeas case and to re-file his amended habeas petition with the Court. Petitioner shall have **sixty (60) days** from the date of this order to file a motion to reopen the habeas petition to the Court’s active docket. Petitioner shall also at that time file an amended habeas petition which contains any newly exhausted claims.

IT IS SO ORDERED.

Dated: June 28, 2016
Detroit, MI

/s/Gershwin A Drain
HON. GERSHWIN A. DRAIN
United States District Court Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on **June 28, 2016.**

s/Tanya R. Bankston
TANYA R.BANKSTON
Case Manager & Deputy Clerk